

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DEBORAH HARPER, :  
Plaintiff, : 1:19-cv-0736-MJP

-v- :  
COMMISSIONER OF SOCIAL SECURITY,  
: Defendant.  
: 

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**ORDER**

Plaintiff filed an action seeking judicial review of the decision of the Commissioner of Social Security which denied her claim for Disability Insurance Benefits and Supplemental Security Income pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3). Both parties filed Motions for Judgment on the Pleadings, and oral argument was held on December 22, 2020.

This Court has reviewed the parties competing motions together with their respective memoranda of law, and the arguments of Amy C. Chambers, Esq. of the Law Offices of Kenneth Hiller PLLC, attorneys of record for Plaintiff, and Blakely J. Pryor, Esq., Special Assistant United States Attorney for the Western District of New York, attorney of record for Defendant. Now, upon all pleadings, the administrative record, the parties' memoranda of law, and the arguments of the parties,

It is ORDERED and ADJUDGED, for the reasons stated in open Court at the oral argument of this matter on December 22, 2020, pursuant to 28 U.S.C. § 636(c) and the parties' consent, and consistent with this Court's ruling from the bench following oral argument, the decision of defendant Commissioner is vacated and the matter is remanded to the Commissioner of Social Security for a mandated rehearing by an Administrative Law Judge (ALJ) and further administrative proceedings consistent with this Order; and it is further

ORDERED and ADJUDGED, that upon remand, the agency shall give further consideration to the new evidence Plaintiff submitted to the agency's Appeals Council after the ALJ's decision, as the Court finds that evidence to be: (1) relevant to the claimant's condition during the time period adjudicated by the ALJ; (2) probative; and (3) reasonably likely to have influenced the ALJ to decide the claimant' s application differently. *See Tirado v. Bowen*, 842 F.2d 595, 597 (2d Cir. 1988). *Williams v. Comm'r of Soc. Sec.*, 236 F. App'x 641, 644 (2d Cir. 2007).

ORDERED and ADJUDGED, that this case is vacated and remanded to the Commissioner for further administrative proceedings including new hearing before the ALJ consistent with this Order. The transcript of these proceedings shall be filed, and the Court Clerk shall close this case.

**SO ORDERED**



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MARK W. PEDERSEN  
UNITED STATES MAGISTRATE JUDGE

DATED: December 28, 2020  
Rochester, New York

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
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DEBORAH HARPER,

19-CV-736 (MJP)

vs.

COMMISSIONER OF SOCIAL SECURITY,  
Defendant.

Rochester, New York  
December 22, 2020  
2:10 p.m.

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**DECISION**

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MARK W. PEDERSEN  
UNITED STATES MAGISTRATE JUDGE

FOR PLAINTIFF: LAW OFFICES OF KENNETH HILLER, PLLC  
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FOR DEFENDANT: OFFICE OF GENERAL COUNSEL  
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## PROCEEDINGS

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**THE COURT:** Counsel, I'm ready to issue my decision.

Title 42 U.S. Code Section 405(g) grants jurisdiction to District Courts to hear claims based on the denial of Social Security benefits. Section 405(g) provides that the District Court shall have the power to enter upon the pleadings and transcript of the record the judgment affirming, modifying or reversing the decision of the Commissioner of the Social Security with or without remanding the case for a rehearing.

14 It directs that, when considering the claim, the  
15 Court must accept the findings of fact made by the  
16 Commissioner, provided that such findings are supported by  
17 substantial evidence in the record. Substantial evidence is  
18 defined as more than a mere scintilla. It means such  
19 relevant evidence as a reasonable mind might accept as  
20 adequate to support a conclusion.

To determine whether substantial evidence supports the Commissioner's findings, the Court must examine the entire record including contradictory evidence and evidence for which conflicting inferences can be drawn.

25 Section 405(g) limits the scope of the Court's

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1 review to two inquiries: Whether the Commissioner's findings  
2 were supported by substantial evidence in the record and  
3 whether the Commissioner's conclusions are based upon an  
4 erroneous legal standard.

5           A person is disabled for the purposes of SSI and  
6 Disability benefits if he or she is unable to engage in any  
7 substantial gainful activity by reason of any medically  
8 determinable physical or mental impairment which can be  
9 expected to result in death, or which has lasted or can be  
10 expected to last for a continuous period of not less than  
11 12 months.

12           Assessing whether a claimant is disabled, the ALJ  
13 must employ a five-step sequential analysis. The five steps  
14 are: One, whether the claimant is currently engaged in  
15 substantial gainful activity; two, if not, whether the  
16 claimant has any severe impairment that significantly limits  
17 the claimant's physical or mental ability to do basic work  
18 activities; three, if so, whether any of the claimant's  
19 severe impairments meets or equals one of the impairments  
20 listed in Appendix 1, Subpart P, Part 404 of the relevant  
21 regulations; four, if not, whether, despite the claimed  
22 severe impairments, the claimant retains the residual  
23 functional capacity to perform past work; and, five, if not,  
24 whether the claimant retains the residual functional capacity  
25 to perform any other work that exists in significant numbers

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1 in the national economy.

2               Claimant bears the burden of proving his or her  
3 case at Steps one through four.

4               Step five the burden shifts to the Commissioner to  
5 show that there is other gainful work in the national economy  
6 which the claimant could perform.

7               We've identified three issues raised by plaintiff  
8 in this case. The first issue I identified was whether the  
9 ALJ erred at Step two by not finding some of her mental  
10 conditions to be severe. I believe sufficient evidence in  
11 the record supports the ALJ's decision on that ground and so  
12 I'm not going to grant any relief to the claimant on that  
13 issue.

14              The other issue we reviewed was whether there was a  
15 gap in the record. And I believe the ALJ found and his  
16 finding is supported by substantial evidence that the ALJ did  
17 what he had to do to fulfill his obligation in completing the  
18 record.

19              With regard to the residual functional capacity,  
20 the question there is whether the new evidence that was  
21 submitted to the Appeals Council is relevant to the  
22 claimant's condition during the time period for which  
23 benefits were denied. Yes, I believe that the new evidence  
24 was relevant because it pertained to her back pain and the  
25 new evidence showed that she had a laminectomy; that is, the

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2:14PM 1 removal of some bone in her spine to alleviate the back pain.

2 Two, she has to show that the evidence was  
3 probative. I believe that she has shown that.

4 And, three, the claimant must show that the  
5 evidence was reasonably likely to have influenced the ALJ to  
6 decide the claimant's application differently. I interpret  
7 that to mean that the ALJ would have decided she was disabled  
8 versus his decision not disabled. And I find that that is  
9 the case here, that the ALJ knowing that she had had major  
10 surgery to relieve the back pain would have reasonably likely  
11 influenced him to decide the case differently.

12 Therefore, I am going to grant judgment to the  
13 plaintiff on that one issue, pursuant to the fourth sentence  
14 in Section 405(g) to remand the case to the Commissioner for  
15 a new hearing to address that particular issue.

16 I ask the claimant to please prepare an order,  
17 settle it with the Commissioner's attorney and attach and  
18 reference a copy of this transcript of my oral decision.

19 Thank you, Counsel, very much for the argument.  
20 Take care.

21 **THE CLERK:** Your Honor, before disconnecting, just  
22 one matter of housekeeping.

23 Are you directing the Clerk of Court to enter  
24 judgment on the pleadings and close the case?

25 **THE COURT:** I am directing the Clerk to enter

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2:16PM 1 judgment for plaintiff and close the case.

2                   Thank you, Mr. Bock.

3                   **THE CLERK:** Thank you, Judge.

4                   **MS. CHAMBERS:** Thank you, your Honor.

5                   (**WHEREUPON**, proceedings adjourned.)

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10                   CERTIFICATE OF REPORTER

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12                   In accordance with 28, U.S.C., 753(b), I  
13 certify that these original notes are a true and correct  
14 record of proceedings in the United States District Court  
15 of the Western District of New York before the Honorable  
16 Mark W. Pedersen on December 22, 2020.

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19                   S/ Diane S. Martens

20 Diane S. Martens, FCRR  
21 Official Court Reporter

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